

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)
)
Amendment of Parts 21 and 74 of)
the Commission's Rules with regard to) RM-9718
Licensing in the Multipoint Distribution)
Service and the Instructional Television)
Fixed Service for the Gulf of Mexico)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS OF BACHOW/COASTEL, L.L.C.

Bachow/Coastel, L.L.C. ("Bachow/Coastel"), pursuant to the Commission's August 11, 1999 request for comments and reply comments,¹ hereby files its Reply Comments in the above-captioned proceeding. Bachow/Coastel is an interested party in this proceeding, as it is the B band cellular licensee for the Gulf of Mexico (the "Gulf") and competes directly against PetroCom License Corporation's ("PetroCom") "developmental" wireless local loop ("WLL") commercial service in the Gulf. Bachow/Coastel is also a party to the Commission proceeding to cancel PetroCom's developmental authorizations to determine the technical and commercial viability of WLL in the Gulf.²

¹ See *Pleading Cycle Established for Comments on Amended Petition for Rulemaking to Amend Parts 21 and 74 of the Commission's Rules to Permit Licensing in the Multipoint Distribution Service and the Instructional Television Fixed Service for the Gulf of Mexico*, Public Notice, DA 99-1601 (rel. August 11, 1999).

² See *Motion for Cancellation of Developmental Authorizations*, February 25, 1999 (the "Joint Motion"). Bachow/Coastel jointly filed this Motion at the Commission with Shell Offshore Services Company, Rig Telephones, Inc. dba Datacom, Sola Communications Incorporated and IWL Communications, Inc.

PetroCom's abuse of its developmental authorizations in the Gulf gives it an unfair competitive advantage against its wireless telephone competitors in the Gulf, such as Bachow/Coastel.³ The transparently self-serving WLL rules proposed by PetroCom exacerbate this unfair advantage. Accordingly, Bachow/Coastel joins Rig Telephones Inc. dba Datacom ("Datacom") and The Wireless Communications Association International, Inc. ("WCA") in opposition to PetroCom's proposed WLL rules, and in opposition to the continuance of PetroCom's developmental authority for WLL in the Gulf. Significantly, all of the commenters in this proceeding, other than PetroCom, oppose PetroCom's proposed WLL rules and decry the illegal nature of PetroCom's "developmental" authorizations in the Gulf.

Bachow/Coastel appreciates having a broad-based trade organization participate in this proceeding, and Bachow/Coastel supports and echoes the positions put forth by WCA. However, Bachow/Coastel does depart from WCA's assertion that there is not a need for additional spectrum for WLL in the Gulf.⁴ Bachow/Coastel has learned through its experience in providing cellular service in the Gulf that a variety of wireless consumers (including oil and gas exploration and production, maritime shipping and commercial fishing) require a variety of wireless telecommunications services (including voice, fax, packet-switched data, broadband data, asynchronous transfer mode communications, frame relay service and the Internet). Although market growth in the Gulf is not as dramatic as land-based growth, due to the smaller number of and lower density of businesses offshore, there is currently a vibrant and growing market for

³ See *Amended Petition for Rule Making of PetroCom License Corporation*, RM-9718 (November 23, 1998) (the "Amended Petition").

⁴ See *Opposition to Petition for Rule Making of The Wireless Communications Association International, Inc.* at 6 (September 10, 1999) ("WCA Opposition").

wireless telecommunications services.

The reason for increasing demand for wireless services in the Gulf is evident: there is no “landline” service in the Gulf, so all communications are wireless. Furthermore, currently available spectrum does not adequately address this demand; for example, Wireless Communications Service spectrum is not suitable for point to multipoint communications. In addition, Datacom agrees that there is a need for offshore WLL.⁵

Unfortunately, PetroCom’s sham developmental authority and its continued refusal to provide any network data has not produced any documentation verifying the need for WLL services in the Gulf. For this reason, and for the likelihood of interference caused by WLL service to Multipoint Distribution Service (“MDS”) and Instructional Television Fixed Service (“ITFS”) in the Gulf (discussed *infra*), Bachow/Coastel proposes that the Wireless Telecommunications Bureau (“WTB”) initiate a study to determine the WLL needs of the Gulf market, and the allocation of additional spectrum best suited to meet such demand.

WLL is essentially a wireless telephony service. The WTB has far more experience and knowledge of how to administer and regulate wireless telephony than the Mass Media Bureau. Thus, Bachow/Coastel believes that the WTB is the proper Commission Bureau to establish WLL rules.

There can be no doubt that rules promulgated following a WTB proceeding will better serve the public interest than the WLL rules proposed by PetroCom. PetroCom’s proposal would lead to interference to land-based MDS and ITFS licensees, and an improperly derived monopoly

⁵ See *Comments of Rig Telephones Inc. dba Datacom* at 4-5 (September 10, 1999) (“Datacom Comments”).

for PetroCom to provide WLL in the Gulf. Neither of these outcomes benefits the public interest.

The WCA Opposition demonstrates that “a Gulf-based station operating using the particular technical parameters assumed by PetroCom, would result in widespread interference to land-based receivers.”⁶ Bachow/Coastel has experience in reducing interference between cell sites on land and cell sites offshore. A considerable amount of computer modeling and real-world testing is needed before promulgating rules. In light of the WCA Opposition’s study, the Commission cannot adopt technical rules based upon PetroCom’s paucity of engineering data suggesting that interference will not occur.

The licensing rules proposed by PetroCom, which feature a small business set-aside⁷ and revenue/asset caps that allow only PetroCom to hold a Gulf-based WLL license,⁸ cannot be taken seriously, much less be adopted by the Commission. The Commission has already determined that set-asides for MDS frequency use would not be in the public interest;⁹ thus, PetroCom’s proposal to use set-asides for MDS frequencies runs counter to that public interest determination. The Commission should maintain its current small business size standards and bidding credits, as PetroCom has not demonstrated that its proposed WLL licensing rules would better serve the public interest.

PetroCom’s proposal to license one entity to provide WLL in the Gulf, and then to

⁶ See WCA Opposition at 11 (*citation omitted*).

⁷ See Amended Petition at 5-6.

⁸ See Datacom Comments at 3.

⁹ See *Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, Report and Order, 10 FCC Rcd 9589, 9664 (1995).

“review” whether to auction another WLL license five years later,¹⁰ strains credulity and is antithetical to all notions of effective competition. In other auction settings, the Commission and the courts have recognized that delay in awarding licenses will postpone competition in the wireless marketplace, and such delay will harm the ability of later entrants to compete.¹¹ PetroCom’s licensing proposal would effectively eliminate competition for WLL in the Gulf.

Of course, PetroCom’s WLL licensing proposals are merely a continuation of the current WLL situation in the Gulf. As explained in the Joint Motion,¹² if PetroCom becomes a licensee under the regulatory scheme proposed in its Amended Petition, it will have an undue advantage over any other licensee because of the long-term commitments it has obtained from customers, and the ready-built commercial system that it has put in place under the guise of developmental authority. This unfair advantage not only harms competitors, such as Bachow/Coastel, but will also allow PetroCom to charge inflated rates to customers as PetroCom’s incumbent Gulf operations limit competitive choice. Thus, Bachow/Coastel concurs in Datacom’s position that the Commission should cancel PetroCom’s developmental authority at least six months before holding any auction of frequencies to provide WLL service in the Gulf.¹³ Indeed, such blatantly illegal developmental authorizations should be canceled immediately, thus hastening the advent of true WLL competition in the Gulf.

¹⁰ See Amended Petition at 8.

¹¹ See *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (citing *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Sixth Report and Order, 11 FCC Rcd 136, 140 (1995)).

¹² See Joint Motion at 16-18.

¹³ See Datacom Comments at 7.

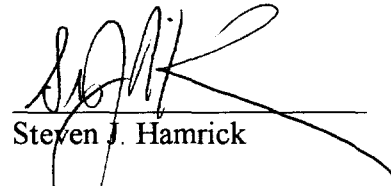
CONCLUSION

For the foregoing reasons, Bachow/Coastel urges the Commission to deny PetroCom's Amended Petition and to delegate the Gulf-based WLL spectrum allocation and rule making authority to the WTB.

Respectfully submitted,

BACHOW/COASTEL, L.L.C.

By:



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CERTIFICATE OF SERVICE

I, Tonya VanField, hereby certify that the foregoing Reply Comments of Bachow/Coastel, L.L.C. was served this 24th day of September 1999 by depositing a true copy thereof with the United States Postal Service, first-class postage prepaid, addressed to the following:

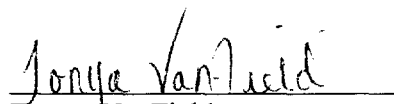
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